

Court of Appeals, State of Michigan

ORDER

People of MI v Jermaine Deshawn Harper

Docket No. 268111

LC No. 04-005735-01

Karen M. Fort Hood
Presiding Judge

Helene N. White

Michael J. Talbot
Judges

In lieu of granting leave to appeal, this Court AFFIRMS defendant's conviction but REMANDS for resentencing. The trial court plainly erred in scoring Offense Variable 3 at 50 points because the victim's death did not result from the operation of a motorized vehicle. MCL 777.33(2)(c); *People v Houston*, 473 Mich 399, 405 n 13; 702 NW2d 530 (2005). Because the victim sustained life threatening injuries, the proper score is 25 points. *Id.* at 407.

The trial court plainly erred in scoring Offense Variable 13 at five points because the offense was not one of three property crimes committed during a five-year period. MCL 777.43(2)(a); *People v Francisco*, 474 Mich 82, 86; 711 NW2d 44 (2006).

Because the correct scoring of the guidelines would result in a different minimum sentence range, defendant is entitled to resentencing. *Id.* at 91-92.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUL 07 2006

Date

Sandra Schultz Mengel
Chief Clerk